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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

**No. 68**

GREAT LAKES STEEL CORPORATION, a Delaware corporation,

*Petitioner,*

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ERIE RAILROAD COMPANY, and THE PENNSYLVANIA RAILROAD COMPANY,

*Respondents.*

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## SUPPLEMENTAL BRIEF OF RESPONDENTS

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### SECTION 22 QUOTATIONS

Petitioner (p. 15 of Reply Brief) states that the Government did not secure any special rate to the West Coast. The export rate was available only upon complying with the requirements of the tariff in which the export rate was published (194a). These requirements are set forth in Exhibit 80 (480b, 481b, 269a). None of these shipments did comply with these rules (171a). In *Peden Iron & Steel Co.* v. *Texas & N. O. R. Co.*, 264 I. C. C. 769 and 268 I. C. C. 562, it is made clear that upon failure to meet the requirements of the export tariff, the export rate would not

apply, and the domestic rate would apply. The question in the *Peden* case then was what was a reasonable rate. That issue of the reasonableness of the rate is not involved in our present case. In *Mack Mfg. Corp.* v. *Alton & S. R. Co.*, 263 I. C. C. 331, the Commission at page 334 states:

> "We have found repeatedly, that unless all the conditions of export tariffs naming rates lower than domestic rates are complied with, the lower export rates are not applicable. *Atlantic Lbr. Corp.* v. *Southern Pac. Co.*, 241 I. C. C. 461.
>
> "The only remaining question which might be raised is whether the charges as such were unreasonable. Complainant presented no evidence concerning that issue other than a statement of the rates and charges which were applicable under the provisions of the domestic tariff and those which would have applied under the export tariff. Manifestly, such a comparison is insufficient to sustain a finding that the higher domestic rates and charges were unreasonable."

The question of establishing a reasonable rate did not become a problem as to these shipments because the Government was accorded Section 22 quotations (171a, 485b, 269a), which accorded the Government the rates in the export tariff without requiring compliance on the part of the Government, with these requirements of the tariff. Petitioner could not benefit from these special Section 22 quotations to the Government.[1] As shown in our brief, page 30, if the export rates were available for use by Petitioner, then the Government would not have paid 63 cents, but a land grant rate of 39.971 cents, per cwt. In *Union Pacific Railroad Co.* v. *United States*, 132 Fed. Supp. 230, the same rules and requirements of the export tariffs were considered. The Government there was questioning whether it was limited to its right under Section 22 quota-

[1] Authorities on page 30 of our brief.

tions, according to it the export rate without compliance with the conditions, or whether it could disregard the conditions and secure land grant deductions from the export rate. At page 232 the court states:

> "As set out in our findings, the defendant did not comply with a number of conditions in connection with Items 235, 270, 285 and 290 of TCFB Export Tariff 29 Series. For these reasons the defendant is manifestly not entitled to land-grant deductions on these particular items."

It is patent that through the Section 22 quotations the Government was able to make these shipments from Mansfield at a lesser rate than was available to a commercial shipper. Petitioner at page 16, refers to shipments to Gulfport, which were made at net land grant rates, and states that perhaps the transit tariff should be held inapplicable to those shipments if they did not comply with the provisions of the transit tariffs, which require that the shipments from the transit point must pay the "lawful rate." These movements under Section 22 quotations would meet the same problem. It is clear that the transit tariffs were not complied with, in that the tariffs require payment of the lawful rate or tariff rate on the outbound shipment (our Brief, Page 37). This, too, is an item to be considered on the question of intent, for if through transited shipments were intended, it is submitted that this requirement as to payment of the lawful charges would have been met. The matter was called to the attention of Petitioner (see Exhibit 47, pages 367b and 368b, 269a).

As pointed out in our brief beginning at page 26, the Government did make new and independent shipments from Mansfield. We there outline the evidence as to the intent and the procedure adopted in order to carry out that intent.

In *Reduced Rates on Returned Shipments*, 19 I. C. C. 409, at page 417 the Commission stated:

> "Once let it be conceded that the inbound and outbound movements are separate and distinct and the impropriety of applying any rates other than the regularly established locals would be self-evident."

In *Great Northern Ry. Co.* v. *Commodity Credit Corp.*, 77 Fed. Supp. 780, the court at page 787 stated:

> "Where the inbound and outbound movements are wholly independent and distinct no fiction can convert them legally into a continuous or through movement."

As stated by the Commission, the continuity of the shipments was terminated when the Navy, which became the owner of the goods when they were loaded on cars at Mansfield, elected to ship them from that point as separate and independent shipments. And complainant, having lost control of the goods, could not restore the continuity of the shipments, and is not entitled to readjustment of the charges on the basis of the through rates from the points of origin to the final destinations.

As stated in *Memphis Merchants Exchange* v. *I. C. R. R. Co.*, 43 I. C. C. 378, at 389:

> "Manifestly, the shipper, consignee, or owner of a shipment cannot treat the different stages or steps of the completed movement of the traffic as a single unit for some purposes and as separable or local movements, in part, for other purposes."

Where the Government makes shipments from the point at which it secures title to the goods, here Mansfield, Ohio, in the method outlined in our brief at page 26, which enables the Government to secure advantages to it because

that transportation is "for the United States," the shipments could not at the same time be considered as but part of shipments made by the people who arranged for the goods to be moved to Mansfield.

## THE SETTING UP OF TRANSIT ARRANGEMENTS AT MANSFIELD.

Petitioner in its Reply at page 9, refers to the setting up of the transit arrangements at Mansfield as indicating that the parties intended that the goods would not be disposed of locally, but would go to the destinations to which they ultimately moved. The evidence concerning the changes in the territorial provisions of the transit tariff is carried in Exhibits numbered from 1 (294b) to 28 (328b), (269a), and shows that Petitioner was making arrangements for *its* transit at Mansfield. These exhibits show that these arrangements were set up prior to August 27, 1942. The evidence shows that Petitioner did not know until August 27, 1942, that the Government was to ship these goods out of Mansfield (71a). When this fact became known, Petitioner addressed a letter to each of the railroads at Mansfield, dated August 27, 1942 (Exhibits 29, 329b; 30, 330b; 31, 331b, 269a). In that letter the three roads were advised that the outbound movements would be on Government bills of lading with freight charges collect, and that Petitioner understood that they could make an adjustment under the transit privileges.

Petitioner was promptly advised that transit could not be accorded under such circumstances (246a, 247a), because it was understood that the Government takes possession of the fabricated material at the transit point and ships it locally therefrom (531b, 532b, 269a). Petitioner took the position that they would go ahead on the assumption that their claim would be recognized (246a, 531b, 269a). It is

clear that during the preliminary stages of setting up the possibility of transit arrangements for Petitioner, it was not known that the Government was to make its shipments from Mansfield. While the parties knew where the goods were going, there was no development of the intent of the Government to make separate shipments. Our problem in determining whether transit occurred, is not solved by learning that the goods necessarily were sent to Mansfield, there fabricated, with the knowledge that they were to be shipped to theaters of war. If this solved the problem there would never be anything but transit at a manufacturing point. The question the Commission had for determination was whether the movements to and from Mansfield were separate and independent shipments, or constituted one continuous through movement under the provisions of the transit tariff. This question is determined by the intent of the parties, and that intent must be ascertained from all of the facts, circumstances and conditions pertaining to the traffic. See our brief, page 22, et seq. and *Baltimore & O. R. Co.* v. *United States,* 24 Fed. Supp. 734, where at 736 the court states that the reason why such interruptions are held not to break continuity "is because of the intent *of the parties at the outset to unite all parts of the carriage.*" That intent to unite all parts of the movements does not exist here, as shown in our brief, page 26 et seq.

Petitioner continued to insist upon its contention that it was entitled to transit allowances (115a). This situation was analogous to that presented in *Lowden* v. *Simmonds etc. Grain Co.,* 306 U. S. 516, where the shippers ordered cars equipped with grain doors and advised that they would decline to pay for the service of installing such doors, on the ground that it was the duty of the carrier to fully prepare the cars. The carriers furnished cars fully equipped and sued for the charge of installing the grain doors. The court stated at page 520:

> "The announcement that respondent would decline to pay for them in no way qualified the request for tariff services, and cannot now stave off liability. The petitioners could disregard this advance disclaimer of liability and rely upon the courts to enforce observance of the tariff. Until changed, tariffs bind both carriers and shippers with the force of law."

The assessment of freight charges cannot be affected by considerations of estoppel. *L. & N. R. R.* v. *Central Iron Co.*, 265 U. S. 59, 65; *Pittsburgh & C. Ry. Co.* v. *Fink*, 250 U. S. 577, 583; *Davis* v. *Henderson*, 266 U. S. 92, 93; *Louis. & Nash. R. R.* v. *Maxwell*, 237 U. S. 94, 97. Certainly the paramount right of the Government, as the owner of the goods f. o. b. cars Mansfield, to make separate shipments therefrom if that was to its advantage, could not be limited or affected by Petitioner's early negotiations with the carriers setting up the possibility of transit arrangements at Mansfield, before it was known, even by Petitioner, that the Government was to make separate shipments from Mansfield.

## THE GOVERNMENT'S INTEREST

Petitioner contends at page 18 of its Reply, that the rights under the transit tariff were denied to it solely because the Government, rather than a private individual, was the purchaser of the goods shipped. At page 17 of the Reply, Petitioner contends that the intention of a commercial shipper that the inbound and outbound movements might be considered independent would not have affected the result if these were commercial shipments.

Petitioner loses sight of the very basis upon which transit rests. Transit is judged by the intent of the parties controlling the movement of the traffic, and there are instances considered in the reports setting up this rule where com-

mercial operators did not intend that transit take place and it was not considered as having been accomplished. *Lake Charles Rice Milling Co., Inc.* v. *Brimstone R. & C. Co.*, 197 I. C. C. 1, 13; *Givens* v. *Director General*, 92 I. C. C. 63, 65. The rule applied is no different in connection with the Government, than as to any other parties who might conduct operations which are governed by such rules.

Petitioner also contends that the effect of the decision on the Government and Government contractors would be to increase the cost to the Government, contrary to the theory of Congress in enacting Section 22 of the Interstate Commerce Act, which was intended to provide the Government with lower rather than higher transportation costs. Petitioner is in error. We have referred to the fact, supra, that a transit operation could not have been consummated unless tariff rates were paid from the transit point to destination. It certainly would not have cheapened the cost of this material to the Government by requiring the Government to pay the tariff rates from Mansfield (see our Brief, pages 30 and 31 and Exhibit 84, 516b, 269a, setting out these rates) on all of its shipments in order that Petitioner could then secure a refund of the major part of its transportation costs in getting the material to Mansfield. There can be no question but what under these arrangements, the Government would have been unable to avail itself of net land grant rates or Section 22 quotations in connection with the making of its shipments from Mansfield, Ohio.

## CONCLUSION

The District Court in its opinion reported in 115 Fed. Supp. 31, and the Court of Appeals for the Sixth Circuit, in its order reported in 220 Fed. (2) 751, both find that upon the record considered as a whole, substantial evidence exists supporting the order of the Commission.

We submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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